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The ruling Jubilee Alliance coalition merges to form the Jubilee Party ahead of the 8 August 2017 presidential elections. The unity of the Jubilee Party contrasts with the opposition Coalition for Reforms and Democracy (CORD), which is divided over the choice of presidential candidate. The Judicial Service Commission (JSC) nominates Justice David Maraga to become chief justice. The Banking Act (Amendment) 2015 comes into force, capping commercial bank lending rates at 400 basis points above the Central Bank of Kenya (CBK) benchmark central bank rate. The United States (US) transport department refuses to commit to allowing direct flights between Kenya and the US.

Jubilee Alliance becomes single party as CORD divides over presidential candidate

With less than a year to the 8 August 2017 general election, the ruling **Jubilee Party** and the opposition **Coalition for Reforms and Democracy (CORD)** are in very different states. The unity of the **Jubilee Alliance**, following its successful merger in September to form the Jubilee Party increases the likelihood that president **Uhuru Kenyatta** (2013- present) will remain in office until 2022 before standing aside for deputy president **William Ruto**. Kenyatta will be the Jubilee Alliance presidential candidate in 2017 with Ruto his running mate.¹ CORD is yet to select a presidential candidate (see below). Both parties are yet to publish their manifestos: however, these will probably be populist promises about development spending that will have little relevance once in office.²

The Jubilee Alliance completed its merger at a launch in the **Kasarani National Stadium (Nairobi)** on 10 September.³ The Jubilee Party unites the political interests of the Rift Valley and the **Central Province**, which makes it well positioned to dominate the next two sets of elections. The newly merged parties include Kenyatta's **The National Alliance**, Ruto's **United Republican Party (URP)**, the **United Democratic Front (UDF)** and other small parties.⁴ In an indication that political maneuvering ahead of the election – which will hinder policy elaboration and implementation – has already started, Ruto announced that more than 40 opposition members of parliament (MPs) and five governors had defected to the Jubilee Party.⁵ The defecting MPs include **Turkana** senator **John Munyes**, national chair of opposition **Ford Kenya**.⁶ The Jubilee Party adopted the slogan, *'Tuko Pamoja'* ('we are together') and Kenyatta emphasised the party's ability to overcome **Kenya's** ethnic divisions.⁷ There is, however, a risk that Kenyans from other ethnic groups will view the Jubilee Party as a **Kikuyu** and **Kalenjin** ethnicity vehicle, raising the longer-term risk of increased popular and political tensions.

The successful merger contrasts with the increasingly fractious CORD, which has delayed naming its presidential candidate for the general election until January.⁸ The delay is indicative of the increasing infighting within CORD amid the risk of defections to the ruling Jubilee Party. CORD and **Orange**

¹ Source, business consultant, Nairobi

² Source, business consultant, Nairobi

³ Daily Nation, 9 Sept 2016.

⁴ Daily Nation, 9 Sept 2016.

⁵ Capital FM, 9 Sept 2016.

⁶ Capital FM, 9 Sept 2016.

⁷ Daily Nation, 9 Sept 2016.

⁸ The Star, 24 August 2016.

Democratic Movement (ODM) leader **Raila Odinga** is the most likely candidate to challenge Kenyatta, in a repeat of the 2013 election.⁹ However, Ford Kenya leader **Moses Wetang'ula** and **Wiper Democratic Movement (WDM)** leader **Kalonzo Musyoka** may challenge Odinga to secure the CORD nomination.¹⁰ CORD has not settled on a mechanism to determine its candidate. CORD has previously said it will appoint international experts to determine which possible candidate has the broadest support across Kenya.¹¹ However, CORD is now considering holding nationwide primaries, a delegates' convention, or backroom negotiations.¹² CORD's three chairmen – senators **James Orengo** and **Johnson Muthama** and MP **Eseli Simiyu** – are responsible for determining the selection mechanism. There is also continued uncertainty about whether CORD will also look to merge into a single party, perhaps in November.

Additionally, a number of other candidates have said they plan to contest the presidency. **Baringo County** senator **Gideon Moi**, son of former president **Daniel arap Moi** (1978-2002) announced on 31 August that he plans to stand.¹³ Moi, chairman of **Kenya African National Union (KANU)**, a constituent member of CORD, believes that Ruto has made too many concessions to Kenyatta.¹⁴ There is also increased Kalenjin suspicion that the Kikuyu may backtrack on their support for Ruto in 2022.¹⁵ Moi's Kalenjin ethnicity may mean he poses a threat to the assumption that Ruto will be the Kalenjin-backed candidate in 2022. He is, however, unlikely to pose a significant challenge to either Kenyatta or Odinga next August. **Bomet County** governor **Isaac Ruto** in July officially launched his new political party **Chama Cha Mashinani (CCM)** ('Party of the Grassroots').¹⁶ Isaac Ruto was formerly a key ally of deputy president Ruto (no relation) and a member of his URP. However, the two fell out over the deputy president's perceived failure to ensure that members of his **Rift Valley** constituency win senior positions at state-owned enterprises and government contracts.¹⁷ There was also criticism that William Ruto failed to consult with senior URP officials about the Jubilee Party merger of the ruling Jubilee Alliance. Isaac Ruto is also unlikely to pose a major challenge to either Kenyatta or Odinga.¹⁸

JSC nominated David Maraga as chief justice

The **Judicial Service Commission (JSC)** on 22 September nominated Justice **David Maraga** to become chief justice.¹⁹ The next chief justice will rule on disputes relating to the August 2017 election, making the appointment especially significant. Kenyatta has nominated Maraga to the national assembly for vetting as the final stage of his appointment. Constitutional age restrictions mean that Maraga, who is 64 years old, will only serve a single term.²⁰ Maraga is currently a court of appeal judge since 2012, and was formerly a high court judge in **Mombasa**, a presiding judge in **Kisumu**, and constitutional review division judge in Nairobi.²¹ Maraga is from **Nyamira County**.²²

Maraga has a positive reputation, especially for his chairing of the **Judiciary Elections Petitions Committee**.²³ Maraga earned a reputation in Kisumu for efficiency and for clearing a significant

⁹ Source, journalist, Nairobi

¹⁰ Source, journalist, Nairobi

¹¹ Source, journalist, Nairobi

¹² Source, journalist, Nairobi

¹³ www.news24.co.ke

¹⁴ Africa Confidential, 8 Jul 2016.

¹⁵ Africa Confidential, 8 Jul 2016.

¹⁶ KBC, 24 Jul 2016

¹⁷ Africa Confidential, 20 Aug 2015.

¹⁸ Source, business consultant, Nairobi

¹⁹ Daily Nation, 22 Sept 2016.

²⁰ Nairobi News, 22 Sept 2016.

²¹ The Star, 23 Sept 2016.

²² Daily Nation, 22 Sept 2016.

²³ The Star, 23 Sept 2016.

backlog of cases.²⁴ The JSC heard and rejected as unsubstantiated two allegations of corruption against Maraga.²⁵ Maraga has said that, if appointed, he will prioritise improving the efficiency of the judiciary.²⁶ Despite reform efforts since 2011, the Kenyan judicial system remains inefficient with approximately 500,000 cases waiting to be heard.²⁷ Maraga has also pledged to strengthen the judiciary ombudsperson to improve its oversight over the judiciary, and accelerate implementation of the **Legal Aid Act** to improve public access to legal recourse.²⁸

Banking Act comes into force capping lending rates

The cap on commercial bank lending rates came into force on 14 September after Kenyatta signed the **Banking Act (Amendment) 2015** into law on 24 August.²⁹ The enactment of the law came despite scepticism from the banking sector, treasury and the **Central Bank of Kenya (CBK)** about the exact benefits of the act.³⁰

*“Kenyatta signing the bill into law caught banks by surprise. Commercial banks were confident that the President would not sign a bill that effectively introduces controlled pricing in a liberal economy and subtly bank executives hinted that Kenyatta, whose family owns **Commercial Bank of Africa (CBA)**, a regional bank, would find it hard pressed to pass the Bill as it was. Furthermore, treasury cabinet secretary **Henry Rotich** and the CBK governor, **Patrick Njoroge**, were also against the bill. Kenyatta went against the advice of these two top economic policy advisers.”³¹*

The act caps the commercial bank lending rate at 400 basis points above the CBK benchmark central bank rate.³² Banks that violate the interest rate restriction can face criminal sanctions. As well as the ceiling interest rate, it also introduces restrictions on interest payable on deposits, also relative to the CBK base rate: the maximum rate of interest on a credit facility should not exceed 4% of the base rate, and the minimum rate of interest on deposits at 70%.³³ The act also codifies existing standard practice that requires banks to disclose to borrowers all charges and terms with regard to the loan.

There was confusion about the exact implementation of the act until the day it came into force, raising questions about how well it is designed. There was some uncertainty about which benchmark rate applies, whether it is the CBK central bank rate, the **Kenya Bank Reference Rate (KBRR)**, or a new CBK rate entirely. Eventually, the CBK confirmed it will use the central bank rate.³⁴ The legislation does not define the term credit facility. It also does not specifically state whether the restrictions will have any retrospective effect. The Kenyan constitution places strict restrictions on the retroactive implementation of laws, increasing the possibility that the **Supreme Court** will hear a challenge against the act.³⁵

*“The signing of the bill has caused confusion in the industry, forcing a majority of banks to hold a series of board meetings to craft new strategies as it has become apparent that the interest rate cap will result in reduced earnings. Analysts have for instance projected that **Equity Bank**, which had a return on equity of 27.3% as at June this year, will post less than a third of this rate*

²⁴ Nairobi News, 22 Sept 2016.

²⁵ The Star, 23 Sept 2016.

²⁶ Daily Nation, 22 Sept 2016.

²⁷ Daily Nation, 22 Sept 2016.

²⁸ Daily Nation, 22 Sept 2016.

²⁹ Capital FM, 27 Jul 2016.

³⁰ Source, senior lawyer, Nairobi

³¹ Source, journalist, Nairobi

³² Capital FM, 27 Jul 2016.

³³ Source, senior lawyer, Nairobi

³⁴ Source, business consultant, Nairobi

³⁵ Source, senior lawyer, Nairobi

following the signing of the bill. Banks have reacted in different ways, signalling that they do not have a firm understanding of how the rate cap will impact their earnings.”³⁶

In the days after the signing of law, some commercial banks stopped issuing unsecured personal loans while others have said that they will concentrate on mobile loans.³⁷ However, there is confusion about whether the act applies to mobile banking.

“Equity Bank announced that all its products including mobile loans will be issued using the new rates. This means that the loans will have an interest rate of up to 14.5% per year, down from the previous interest rates that ranged between 24% and 120% per annum. The bank’s strategy is to go for a low volumes high-margins model. CBA, which is affiliated with the Kenyatta family, has insisted that the amended Banking Act does not apply to mobile loans. CBA has a mobile loan product that attracts a ‘transaction fee’ of 7.5% of the loan amount and is payable within 30 days, in effect it is charging borrowers a 90% interest rate.”³⁸

Other banks have said that they will concentrate on lending to the government by buying treasury bills and bonds but this strategy may backfire due to the government announcing that it may turn to the international markets for borrowing through issuing a second Eurobond.

When Kenyatta signed the bill into law, he echoed previous CBK and **Kenya Bankers Association (KBA)** warnings that the act would limit formal access to credit, thus increasing informal lending practices.³⁹ Additionally, the CBK had previously warned that the act would result in credit market inefficiencies, increase informal lending, and weaker monetary policy implementation.⁴⁰ The KBA has also previously warned that borrowers will increasingly turn to foreign currency-denominated loans to avoid the cap, thereby increasing pressure on the Kenyan shilling.⁴¹ The **International Monetary Fund (IMF)** has warned that **Kenya’s** interest rate cap on commercial bank lending rates will “blur” monetary policy signals.⁴² IMF country representative **Armando Morales** warned that the new policy will undermine CBK efforts to target inflation.⁴³ Morales warned that the cap will increase pressure on the CBK’s mandate to maintain overall price stability and support the financial sector. Inflation has increased since June, with consumer price inflation reaching 6.4% year on year in July compared to 5.8% the previous month.⁴⁴ Morales said the CBK will need to review its policy toolkit to employ instruments to counteract increased uncertainty in the domestic financial market and overall economy.⁴⁵ Morales warned that efforts to lower financing costs through controls have typically proved unsuccessful.⁴⁶

Kenyatta pledged to introduce additional financial sector reforms to mitigate any negative impacts of the act. The banking sector has warned that the act will do little to address the main causes of high interest rates, notably the poor repayment record of Kenyan borrowers and the lengthy process required to foreclose on securities upon default.⁴⁷ The broader private sector is, however, more cautiously optimistic.

“While it is still too early to see how the new fixed interest regime plays out, some Kenyan chief executives from sectors such as retail and manufacturing have expressed optimism in local media as they expect they will make lower interest payments on the back of reduced rates. This in turn

³⁶ Source, journalist, Nairobi

³⁷ Source, journalist, Nairobi

³⁸ Source, journalist, Nairobi

³⁹ Capital FM, 27 Jul 2016.

⁴⁰ Bloomberg, 28 Jul 2016.

⁴¹ Capital FM, 27 Jul 2016.

⁴² Bloomberg, 29 Aug 2016.

⁴³ Bloomberg, 29 Aug 2016.

⁴⁴ Standard, 16 Aug 2016.

⁴⁵ Capital FM, 27 Jul 2016.

⁴⁶ Capital FM, 27 Jul 2016.

⁴⁷ Source, business consultant, Nairobi

is expected to release cash which can go to further investment in people and assets or trickle down to shareholders.”⁴⁸

United States unwilling to begin direct flights

The **United States (US)** transport department on 1 October refused to commit to allowing direct flights between Kenya and the US.⁴⁹ Direct flights would significantly ease operational challenges facing US-based companies in Kenya with national airline **Kenya Airways Ltd** well placed to benefit.⁵⁰ The US transport department noted that the **Kenya Civil Aviation Authority (KCAA)** had overseen “significant progress”⁵¹ in improving civil aviation safety.⁵² However, the transport department refused to commit to allowing airlines to fly a direct route between Kenya and the US.⁵³ Kenya transport cabinet secretary **James Macharia** had on 29 September told the **Civil Aviation Assembly** conference in **Canada** that Kenya had met all the conditions required for direct flights.⁵⁴ In 2009, **Delta Air Lines Inc** planned to begin a direct service between **Atlanta (US)** and Nairobi with a stop in **Dakar (Senegal)**. However, US **Federal Aviation Authority (FAA)** officials withdrew clearance for the route one day before its scheduled start date, citing security concerns in Nairobi.⁵⁵ The FAA has in 2016 conducted various audits of **Jomo Kenyatta International Airport (JKIA)** (Nairobi) prior to completing an **International Aviation Safety Assessment (IASA)** report. Under the IASA, the FAA determines whether or not a country’s oversight of air carriers complies with international safety standards.

The government has in recent years introduced practical security measures at JKIA, including new security fences and greater separation between departures and arrivals. However, Western risk management planners (and certainly many ordinary Kenyans) have questioned the ability of Kenya’s security and emergency services to effectively respond to incidents when they occur at JKIA.⁵⁶ A small fire in August 2013 was allowed to spread, in an indication of the serious limitations of JKIA’s disaster management system.⁵⁷

Implications

Despite popular frustration at the pace of reform and the failure to deliver on development targets, Kenyatta enters the election period as clear favourite. Despite the enacting of the **2010 Constitution** that aimed to depoliticise ethnicity, ethnic politics will play a central role in the 2017 general election. This will mean that alliances between members of the Jubilee Party and the constituent parties of **CORD** will continue to shift in the run-up to the polls. Increased political tensions before the 8 August 2017 general election will hinder policy elaboration and implementation. The appointment of Maraga, if confirmed, is a sensible one and will increase the credibility of judicial petitions regarding the election, thereby reducing the risk of electoral violence.

It is likely that Kenyatta introduced the banking legislation as a populist measure to reduce the cost of living, with less than a year to go before the general election. Disregarding expert opinion to enact the legislation does not bode well for effective governance in the run up to the election. Banks will reject high-risk borrowers, namely small and medium enterprises most in need of access to credit. Small banks, which depend on expensive deposits, will come under more pressure than large banks and this will result in a series of mergers and acquisitions.

⁴⁸ Source, journalist, Nairobi

⁴⁹ Business Daily, 1 Oct 2016.

⁵⁰ Business Daily, 1 Oct 2016.

⁵¹ Business Daily, 1 Oct 2016.

⁵² Business Daily, 1 Oct 2016.

⁵³ Business Daily, 1 Oct 2016.

⁵⁴ Daily Nation, 29 Sept 2016.

⁵⁵ Source: Corporate risk management adviser, East Africa

⁵⁶ Source: Corporate risk management adviser, East Africa

⁵⁷ Source: Corporate risk management adviser, East Africa

It is unclear whether the improvements to JKIA's infrastructure are sufficient for the FAA. However, at a time when the US is looking to deepen political, commercial and security ties with Kenya, allowing direct flights would appear a positive move for all parties.

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